Before the
FEDERAL COMMUNICATIONS COMMISSSION
Washington, DC

In the Matter of	)	
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To: The Commission

JOINT COMMENTS OF RADIO BROADCASTERS

April 11, 2025

David D. Burns
F. Scott Pippin
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036

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Summary

In their Comments, the radio broadcast licensees identified on the signature page hereto (the "Radio Broadcasters"), by counsel, offer a number of recommendations on how the Commission can take action to alleviate unnecessary regulatory burdens on broadcasters. Specifically, the Radio Broadcasters encourage the Commission to examine and eliminate or reduce the regulatory burdens associated with the following rules:

- **Radio Multiple Ownership Rule** – The Local Radio Ownership Rule (47 C.F.R. §73.3555(a)) should be eliminated, or at a minimum the AM/FM subcaps should be lifted.
- **EEO Rules** – The Equal Employment Opportunities (EEO) Rule (47 C.F.R. §73.2080) should be eliminated.
- **Online Public Inspection File Rules** – The Local Public Inspection File Rule for Commercial Stations (47 C.F.R. §73.3526) should be eliminated.
- **FM Radio Non-Duplication Rule** – The FCC Radio Non-Duplication Rule (47 C.F.R. §73.3556) should be eliminated.
- **Regulatory Fee Payments** – Licensees should be able to make installment payments of annual regulatory fees (47 C.F.R. §§1.1166 and 1.1914).
- **Applications for Voluntary Assignment or Transfer of Control** – Changes in ownership of a licensee that do not impact control should not require Commission consent (47 C.F.R. §73.3540).

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To: The Commission

JOINT COMMENTS OF RADIO BROADCASTERS

The radio broadcast licensees identified on the signature page hereto (the "Radio Broadcasters"), by counsel, hereby file these joint comments in response to the Public Notice released by the Commission on March 12, 2025, requesting that commenters identify FCC rules for the purpose of alleviating unnecessary regulatory burdens.

The Radio Broadcasters are the licensees and operators of a total of 42 full power AM and FM commercial radio broadcast stations in markets ranging in size from Nashville, Tennessee, the 39th largest Radio Market in the U.S. as determined by The Nielsen Company (US), LLC, to stations operating in rural areas outside of any Nielsen-defined Markets. The Radio Broadcasters fully support the Commission's efforts to alleviate unnecessary regulatory burdens on broadcasters. Specifically, the Radio Broadcasters encourage the Commission to examine and eliminate or reduce the regulatory burdens associated with the following rules:

- Radio Multiple Ownership Rule (47 C.F.R. §73.3555(a))
- EEO Rules (47 C.F.R. §73.2080)
- Online Public Inspection File Rules (47 C.F.R. §73.3526)
- FM Radio Non-Duplication Rule (47 C.F.R. §73.3556)
- Regulatory Fee Payments (47 C.F.R. §§1.1166 and 1.1914)
- Applications for Voluntary Assignment or Transfer of Control (47 C.F.R. §73.3540)

The Radio Broadcasters believe that the foregoing rules impose excessive regulatory burdens on broadcasters while providing little or no countervailing benefit to the public, the Commission, or the broadcast industry. Radio broadcasters operate in a competitive ecosystem with many forms of media that are not subject to this burdensome regulatory regime. Eliminating unnecessary rules such as these will put broadcasters on a more equal footing with these non-regulated media sources.

A. The Local Radio Ownership Rule (47 C.F.R. §73.3555(a)) Should Be Eliminated, or at a Minimum the AM/FM Subcaps Should Be Lifted.

The Local Radio Ownership Rule limits the number of radio stations a single entity can own in a particular market. The rule's origin can be traced to the passage by Congress of the Telecommunications Act of 1996, which included Section 202(h) requiring the Commission to "repeal or modify" broadcast ownership rules that are no longer necessary "as a result of competition." Yet despite the steady rise of audio competition (which Congress anticipated), a paradigm shift in listener and advertiser habits toward digital, and an overall decline in radio listenership and advertising, the Commission has allowed the rule to endure. It now stands as a relic of a different era.

The impact that streaming audio from Amazon, Apple, Pandora, Spotify, and YouTube has had on radio listenership cannot be overstated. The Commission's 2024 Communications Marketplace Report concluded that the total share of time spent listening to AM/FM radio is now just 36%.[1] Streaming, YouTube, SiriusXM, and podcast listening now have a substantially larger combined share of listenership than radio. Radio's core listenership is fragmenting into dozens

[1] *Communications Marketplace Report* at ¶302, GN 24-119 (2024).

of other audio sources. This trend is spurred by the ubiquitous adoption of "smart" technology such as smartphones and smart speakers, which are sold by the same entities that compete with broadcast radio in the audio space: Amazon, Apple, and Google. Apple CarPlay and Android Auto are in almost all new cars, meaning that radio's dominance in automobiles is under direct threat. It is undeniable that radio broadcasting faces fierce competition from numerous other audio sources, many of which are operated by Big Tech giants that have no ownership limits at all.

Radio broadcasters face intense pressure in advertising sales as well. Local broadcasters' biggest competitors used to be local newspapers; now, they are massive international corporations like Google and Meta (owner of Facebook) that, despite their global orientation, employ substantial sales forces. Data in the 2024 Communications Marketplace Report demonstrates the exponential rise in digital advertising: between 2021 and 2023, digital advertising spending increased 21%, while radio advertising spending increased by just 1%.[2] Big Tech has been highly successful at pulling advertisers away from radio.

The Local Radio Ownership Rule severely restricts radio broadcasters from competing with their outsized streaming and digital competitors. Because radio broadcasters are artificially limited to a defined number of stations in a market, they struggle to achieve the economies of scale needed to compete on a local-market basis against Big Tech rivals like Amazon, Apple, Alphabet, and Meta, any one of which dwarfs the entire radio industry in size, and none of which are limited by ownership restrictions. Station owners also struggle to attract the capital needed to invest in new technologies, including their own local digital platforms. Chairman Carr has called

[2] *Id*. at ¶273.

the current situation a "break glass moment for America's broadcasters,"[3] and the Radio Broadcasters agree. It is noteworthy that 73 members of Congress recently sent a letter to Chairman Carr expressing their concern that reforming the Commission's outdated ownership rules is "not just an urgent economic necessity, it is a public service imperative."[4]

In earlier times, it may have been sufficient for the Commission to take incremental steps toward relaxation of the Local Radio Ownership Rule. That time has passed. Without the ability to offer a larger scale and array of choices to advertisers – such as more formats, greater exposure on more stations, more digital options such as localized streaming and apps, and more cross-promotions – radio will continue to struggle. The Commission must recognize that radio is now just one choice among many in an integrated audio and media marketplace, and must fully commit to the deregulatory process that Congress instructed it to undertake by eliminating the outdated Local Radio Ownership Rule. This will free radio broadcasters from the artificial constraints of the rule and allow them to develop critical economies of scale.

To the extent the Commission cannot commit to a complete elimination of the Local Radio Ownership Rule, it should at least eliminate the ownership subcaps that prevent a broadcaster from owning more than a certain number of stations in the same service (AM or FM). The current rule prohibits the ownership of more than five stations in the same service in even the largest markets. Given the overall scope of the current audio market – consisting not just of radio but hundreds of streams of digital and satellite programming – and the large number of radio stations that are struggling and could benefit from combining into a larger station group,

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[3] Commissioner Carr Statement on FCC's Denial of WADL TV's Application, (rel. Apr. 23, 2024).

[4] Letter from the Honorable Richard Hudson, Member of Congress, et al., to the Honorable Brendan Carr, Chairman, Federal Communications Commission (Mar. 28, 2025), https://www.nab.org/documents/newsRoom/pdfs/032825_Media_Ownership_Letter.pdf.

the subcap limitations are entirely unnecessary. Broadcasters should be free to choose which stations in a market they wish to own without regard to the service in which the stations operate.

As an interim measure, while this proceeding and other Commission and judicial proceedings considering the Local Radio Ownership Rule are pending, the Commission should adopt a waiver policy allowing radio stations to enter into time brokerage agreements which are inconsistent with the Local Radio Ownership Rule, subject to termination of such agreements after a reasonable transition period in the event the Local Radio Ownership Rule is not eliminated or amended so as to bring such agreements into compliance.

B. The Equal Employment Opportunities (EEO) Rule (47 C.F.R. §73.2080) Should Be Eliminated.

The FCC's EEO rules requires broadcast stations to conduct broad outreach and recruitment for all full-time positions, undertake specified EEO-related recruitment initiatives, retain records regarding compliance with such requirements, create an EEO report every year and upload the report to the online public inspection file ("OPIF"), and file periodic EEO program reports. The FCC staff conducts random audits of broadcast stations regarding EEO compliance and recently reinstated the requirement for broadcast stations to file Form 395-B, an annual report on the race, ethnicity and gender of its workforce, a requirement which has been suspended to date.

The FCC's EEO rules constitute a classic case of the costs of governmental regulation exceeding the benefits of such regulation and should be eliminated in their entirety. State and federal governments already have laws and regulations applicable to employers that are specifically designed to protect against discrimination and which provide more meaningful

remedies for the victims of discrimination than do the FCC's EEO rules. Title VII of the Civil Rights Act of 1964[5] prohibits employment discrimination based on race, color, religion, national origin or sex, the same protected classes as are covered under the FCC's EEO rules.[6] Title VII empowers the U.S. Equal Employment Opportunity Commission to enforce its anti-discrimination mandate, including to bring suit in federal court for temporary or permanent injunctive relief.[7] The Civil Rights Act of 1991 amended Title VII to provide victims of intentional employment discrimination with a cause of action for compensatory and punitive damages.[8] State laws provide similar employment protections.[9]

In short, EEO requirements are part of a broader framework of federal and state labor laws which apply to all industries, including broadcasting, ensuring equal opportunity in employment. Those laws are enforced by large professional government agencies which specialize in EEO and other anti-discrimination matters and, not only have greater enforcement powers than the FCC, but also greater experience and resources to investigate claims of discrimination and enforce applicable laws. In light of these federal and state laws and enforcement mechanisms, placing separate and additional EEO requirements solely on broadcasters is simply not necessary. Existing anti-discrimination laws ensure that broadcasters continue to promote equality of opportunity without the need for outdated government mandates specific to the broadcast industry.

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[5] 42 U.S.C. §2000e *et. seq*.
[6] *See 47 C.F.R. §73.2080(a).*
[7] *42 U.S.C. §2000e-5(f)(2)-(g).*
[8] *42 U.S.C. §1981a.*
[9] *See, e.g., New York Human Rights Law*, NY Exec L §290 *et. seq*. The provisions of the Human Rights Law are enforced by the New York State Division of Human Rights, which each year handles thousands of active cases and reaches more than 5 million New Yorkers across the state with information on their rights and protections. *See* https://dhr.ny.gov/what-we-do.

While they create scant countervailing benefits, the FCC's EEO rules impose significant administrative burdens on broadcast stations. The required broad outreach and recruitment do not result in an increase in qualified candidates, especially for smaller stations and in rural areas, and are relics of the pre-internet age before job seekers had instant online access to open positions. Required supplemental recruitment initiatives, such as job fairs and training seminars, can be costly to organize and attend, and have limited benefits. The recordkeeping obligations and EEO report drafting are time-consuming and can require costly legal review. There is no evidence that members of the public regularly access or review the Annual EEO Public File Reports in a station's OPIF or elsewhere. The FCC's random audits of stations' EEO programs are extremely time-consuming and expensive.

In sum, the operational costs to comply with the FCC's EEO rules are significant, and the rules cannot be shown to create any significant improvement in diminishing discrimination, providing remedies with respect to discrimination, or promoting equal opportunities in employment.

Moreover, the rules create an uneven playing field for broadcasters versus competing media outlets. The media industry has been massively transformed with the rise of digital media, streaming services, and social media platforms. Radio broadcasters are now competing with media outlets that are not burdened by redundant government regulations such as the FCC's EEO rules. The FCC's EEO rules should be eliminated or, at a minimum, limited to the portion which does not impose unnecessary burdens on broadcasters (*i.e.*, Section 73.2080(a)). By eliminating these rules, the FCC would achieve its goal of reducing unnecessary regulations.

C. The Local Public Inspection File Rule for Commercial Stations (47 C.F.R. §73.3526) Should Be Eliminated.

The local public inspection file rule for commercial stations[10] requires all full-service radio stations to maintain a public inspection file. The OPIF contains eight different sections – (i) station information; (ii) applications and related materials; (iii) ownership reports; (iv) equal employment opportunity records; (v) contour maps; (vi) political files; (vii) children's TV programming reports; and (viii) more public inspection files. The information in many of these sections is automatically linked by the FCC from other FCC filing databases. For example, a station is generally not required to upload station information, applications, ownership reports and contour maps. In this regard, the public file information is duplicative of FCC filings that are available elsewhere on the FCC website. Public file information in certain other sections of the file, such as EEO Public File Reports, political files, issues/programs lists, and other documentation found under the "more public inspection files" section, must be uploaded by station personnel. The process of preparing and uploading this documentation is extremely time-consuming and onerous.

Maintaining the OPIF is both burdensome and costly. Stations must dedicate significant time and resources to ensure that the file is up-to-date and compliant with FCC regulations. This includes uploading, tracking, and managing various documents and reports. For smaller broadcasters, particularly those in rural or underserved areas, these costs can be disproportionately high compared to the benefits derived from the file. Moreover, the FCC's OPIF interface is notoriously unstable. Station personnel can spend hours uploading documents

[10] 47 C.F.R. §73.3526.

which suddenly "disappear," and the uploading process must be repeated. The OPIF interface often is nonfunctional on filing deadline dates.

The public file is not an efficient or necessary regulatory requirement in today's digital age. Stations should no longer be required to maintain these relics of the past.

D. The FCC Radio Non-Duplication Rule (47 C.F.R. §73.3556) Should Be Eliminated.

The radio non-duplication rule prohibits two commonly-owned FM radio stations with more than 50% overlap between their principal community contours from duplicating more than 25% of each station's programming. The rule was eliminated by the Commission in 2020,[11] and reinstated by the Commission on reconsideration in 2024.[12] The Radio Broadcasters believe that the Commission got it right in 2020 when it determined that "the costs of continued regulation of radio programming duplication exceed the benefits of regulation."[13]

There are numerous reasons why a broadcaster may want to substantially simulcast the programming of two stations in the same market. In some cases, terrain blockage may cause the two stations to serve, in large part, two separate areas even though a principal community contour overlap analysis would show more than 50% overlap between the stations. In others, simulcasts may help the stations inform listeners of a format change.[14] And as the Commission has acknowledged, in times of emergency, the ability to simulcast multiple stations is needed "to provide broadcasters increased flexibility to react nimbly to local needs."[15] The current case-by-case waiver policy is an inefficient way to address these situations and forces smaller

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[11] *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations*, Report and Order, 35 FCC Rcd 8383 (2020) ("2020 Program Duplication Order").
[12] *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations*, Order on Reconsideration, MB 19-310, 17-105 (2024) ("2024 Program Duplication Order").
[13] 2020 Program Duplication Order at 8386-87.
[14] *See id*. at 8390.
[15] *Id*. at 8389.

broadcasters to strain their resources to pay legal and other costs of seeking a waiver, and to put business plans on hold while awaiting a waiver decision.

Moreover, amid the multiplicity of media sources currently available to the public, the concerns regarding the inefficient use of spectrum caused by program duplication are far less significant than was the case when the rule was first adopted in 1964, thus greatly diminishing the rationale for, and the benefits of, the rule.[16]

For the reasons stated above, the radio non-duplication rule is no longer required and should be eliminated.

E. Licensees Should be Able to Make Installment Payments of Annual Regulatory Fees.

The Communications Act of 1934, as amended (the "Communications Act"), allows that annual regulatory fees in "large amounts" may be paid in installments,[17] and the Commission's rules similarly contemplate such installment payments.[18] However, the Commission's rules also provide that "whenever feasible, the Commission shall collect the total amount of a debt in one lump sum," and allow for payments in installments only where "a debtor is financially unable to pay a debt in one lump sum."[19]

Small broadcasters facing serious competitive headwinds and liquidity problems often find it difficult to pay regulatory fees in a single lump sum. Under the current rules, grant of installment relief is premised on a finding by the Commission, after submission by the licensee

[16] The rule evolved over the years into the form adopted in 1992 which prohibited commonly owned radio stations with substantially overlapping signals in either service (AM or FM) from duplicating more than 25% of their programming. As noted above, the rule was eliminated by the 2020 Program Duplication Order and reinstated in its current form by the 2024 Program Duplication Order.
[17] 47 U.S.C. §159(f)(2).
[18] 47 C.F.R. §1.1157(b)(2).
[19] See 47 C.F.R. §1.1914(a). *See also* 47 C.F.R. §1.1166 (providing that requests to pay regulatory fees in installments be granted in accordance with §1.1914 of the Commission's rules.)

of financial statements and other information, that the licensee is unable to pay the regulatory fees in a single lump sum.[20] This process creates inefficiencies by requiring the payor to expend resources to show inability to pay, and requiring the Commission to expend resources to address the payor's request. While the Commission permitted payors to request installment payment relief for regulatory fee obligations during the COVID-19 pandemic, such relief was required to be sought on a case-by-case basis.[21]

The Commission should exercise its statutory authority under Section 9 of the Communications Act to give all licensees the option to pay all large amount regulatory fees for a fiscal year in up to twelve equal installments. In doing so, the Commission should define "large amounts" under Section 9(f)(2) of the Communications Act in a way that does not disadvantage licensees of one or two small market or rural stations, which may have relatively low regulatory fees but may also have significant financial constraints. This approach would relieve hardships imposed on a financially challenged industry and eliminate an inefficient process of seeking installment relief which produces little benefit for the public, regulated entities, the Commission or the U.S. government.

F. Changes in Ownership of a Licensee That Do Not Impact Control Should Not Require Commission Consent (47 C.F.R. §73.3540).

The Commission's rules require that various transactions that involve no change in *de jure* or *de facto* control of a licensee nonetheless require Commission consent, although such consent may be sought using FCC Form 2100, Schedule 316; *i.e.* a "short-form" or "pro forma"

[20] *Id*.
[21] *See, e.g., Assessment and Collection of Regulatory Fees for Fiscal Year 2022*, MD 22-223 , Report and Order and Notice of Inquiry, ¶105 (OMD 2022).

application.[22] The language of the rule is somewhat vague and often creates confusion as to the applicability of the rule to a particular transaction. This leads to considerable uncertainty as to which transfers may require short-form Commission consent, as opposed to consent using plenary procedures or no consent at all.

The Commission should revise 47 C.F.R. §73.3540 to provide that: (a) any transaction involving the assignment of a license to a new assignee will require Commission consent although such consent may be sought using short-form procedures where there is no change in control,[23] and (b) transactions which involve a change in the ownership structure, directly or indirectly, of the licensee will require Commission consent only where such transactions involve a change in *de jure* or *de facto* control. This approach is consistent with Section 310(d) of the Communications Act, which requires Commission consent only where there is an assignment of a license or a "transfer of control of [an entity holding a] license."[24] It also would clarify the situations in which consent to a transaction is required and the process necessary to seek such consent. Moreover, these proposed revisions would reduce the need for broadcasters to expend resources and incur legal fees in requesting consent for transactions which have no impact on the control of broadcast stations and require no public interest review by the Commission, while at the same time reducing the need for the Commission to expend resources in processing such requests.

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[22] *See* 47 C.F.R. §73.3540(f)(3-6). This rule requires, *inter alia*, Commission consent where (i) stockholders of a corporation retire and the transferred interest is not a controlling one, (ii) there is a corporate reorganization which involves no substantial change in beneficial ownership of the corporation, (iii) there is a transfer of interests in a licensee from one entity to another commonly controlled entity, and (iv) where there is an assignment of less than a controlling interest in a partnership.
[23] *See* Section 309(c)(2)(B) of the Communications Act. 47 U.S.C. §309(c)(2)(B).
[24] 47 U.S.C. §310(d).

The Radio Broadcasters support the Commission's efforts to alleviate unnecessary regulatory burdens on broadcasters and encourage the Commission to eliminate the above-described rules on the basis that such rules impose excessive regulatory burdens on broadcasters while providing little or no countervailing benefit to the public, the government, or the broadcast industry.

Respectfully submitted,

Clarke Broadcasting Corporation
Galaxy Syracuse Licensee LLC
Galaxy Utica Licensee LLC
Golden Isles Broadcasting, LLC
Hancock Communications, Inc.
HEH Communications, LLC
The Cromwell Group, Inc.
The Cromwell Group, Inc. of Illinois
WYCQ, Inc.

Dated: April 11, 2025

By: /s/ *David D. Burns*
David D. Burns
F. Scott Pippin

Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
(202) 416-6752
dburns@lermansenter.com
spippin@lermansenter.com

Its Attorneys